

ENTERED

September 13, 2016

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

GATEWAY MORTGAGE GROUP, LLC,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL ACTION NO. H-16-2123
	§	
LEHMAN BROTHERS HOLDINGS INC.,	§	
	§	
Defendant.	§	

ORDER OF DISMISSAL

Lehman's motion to dismiss the complaint, (Docket Entry No. 16), is granted for the reasons stated in detail on the record at the hearing held on September 7, 2016. (Docket Entry No. 26). The first filed rule is a first basis for dismissal. The *Trejo* factors of discretion under the Declaratory Judgment Act all weigh in favor of dismissing here and permitting Gateway to pursue its claims in the Southern District of New York, where Lehman's bankruptcy is pending. *See St. Paul Ins. Co. v. Trejo*, 29 F.3d 585 (5th Cir. 1994); 28 U.S.C. § 2201. The forum selection clause in the 2012 Settlement Agreement between the parties is not triggered. (*See* Docket Entry No. 17, Ex. 6). Alternatively, it is subject to being displaced by the public policy that strongly disfavors duplicate proceedings in multiple fora. *See, e.g., Guaranty Bank v. Lehman Brothers Holdings, Inc.*, Civil Action No. 2015-0549 (E.D. Wis. 2016). The court finds no unfair prejudice to Gateway if it seeks to resolve its claims in the Southern District of New York.

The complaint is dismissed without prejudice. If proceeding before the Court for the Southern District of New York does not resolve all the issues affecting Gateway's contracts that are cognizable, ripe, and still in need of decision, then and only then may Gateway file its action in this forum.

Gateway's motion for leave to file an amended complaint, (Docket Entry No. 19), is denied because it is moot. Neither the first filed rule, nor the *Trejo* analysis, nor the exclusion of these claims from the parties' Settlement Agreement would be affected by the proposed amendment.

SIGNED on September 13, 2016, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal", is positioned above a horizontal line. The signature is fluid and cursive, with a large loop at the end of the last name.

Lee H. Rosenthal
United States District Judge